



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
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OCT 16 2003

Paper No. 9

In re Application of
10/003,099

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: DECISION GRANTING PETITION
: UNER 37 C.F.R. § 1.181 FOR NEW
: OFFICE ACTION

Application No.

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Filed: 12/06/01

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Attorney Docket No. 2910.0010

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This is a decision on the petition filed on 7/28/2003, Petition Under 37 C.F.R. § 1.181 For New Office Action.

The petitioner requests a new Office action be provided that clearly sets forth the grounds for the restriction requirement and responds to the traversal arguments.

Upon review of the original restriction requirement, it has been found defective. The examiner failed to meet all the evidentiary requirements, for example, "showing of burden on the Office" and providing examples of distinctness.

The Office Action mailed on 5/7/2003 is also found defective. It fails to answer the arguments with respect to the traversing of the restriction. It also fails to make the restriction "FINAL" as required by MPEP § 821.01 and therefore the Office Action is incomplete.

The interview summary mailed on 6/18/2003 does not address the failure of the Office actions of making the case for "restriction", answers the arguments on the traversal and making "FINAL" of the second Office Action. The interview summary does not clarify the restriction.

Accordingly, the Office action mailed on 5/7/2003 is hereby withdrawn.

A new Office action will reconsider the restriction and the new Office Action will provide clarity as to the Office's position.

The Office communication will be remailed and the shortened statutory period that was originally set forth in the Office communication shall be restarted to run from the mail date of the newly supplied Office action or notice.

James Dwyer, Director
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